

CONTRACTCONTRACT ACT OF 1872. (BARE ACT)

↳ Dictionary of any section
 ↳ It has no case laws passed by legislature

INTRODUCTION:

- Section 2 of the Indian Contract Act of 1872 deals with the definition of the term Contract & Section 2(h).
- It is an agreement enforceable by law. All agreements enforceable by law are contracts whereas the agreements which are not enforceable by law are not contract.

There are 5 types of contracts:

1) VALID CONTRACT - Section 10 contains the essentials of a valid contract which are:

- An agreement
- Competency Of Parties [18 + Not Lunatic, Mentally disabled]
- Lawful Consideration
- Agreement must not be declared void. [agreement for murder]
- Free Consent [while marriage if one party lies about his govt job to other for consent is not free consent]

2) VOID CONTRACT - An agreement not enforceable by law is a void agreement e.g. An agreement with minor is a void agreement.

3) VOIDABLE CONTRACT - Voidable Contract can be avoided by one of the party to the contract as his option. If such a party does not avoid the contract then the contract remains valid but if otherwise party prefers to avoid the contract the contract becomes void e.g. lie during wedding.

[EXAM TIP
REMEMBER SECTIONS, E.G., CASES]

Q. All contracts are agreements but all agreements are not contracts?

Ans- Agreement is a mutual understanding between two or more parties which takes place when an offer is made by one party to another e.g- If two friends agree to watch a movie together but one fails to reach at the movie theater ~~on~~ at time.

- Whereas, a contract is an agreement made within legal boundaries ^{under sec 10}, e.g- i.e- an offer is placed, ^{competency} ~~competencies~~ of both ^{parties} ~~the~~ are kept under check, Lawful. Consideration is agreed upon & free consent of the parties are taken but one the most important ^{condition} ~~thing~~ that is stressed upon is the intentions of the party. ~~as~~ Intentions are made clear by both the parties for contract to be placed. e.g- party 'A' agrees to sell his watch to party 'B' for ₹ 10,000. The intention of both the parties are clear as 'A' wants to sell his watch & 'B' wants to buy it for X amount.

- Therefore, we can say that an agreement is when the intentions of the ^{either} ~~parties~~ ~~are~~ is not clear but for an agreement to be considered a contract the intentions of both the parties are made clear.

- Agreement is a part of contract whereas Contract is a wider concept.

Agreement = Offer / Proposal + Acceptance

ESSENTIALS OF A VALID CONTRACT: ← Agreement offer

1. AGREEMENT - Acc. to Sec. 2(e) every promise & every set of promises forming a consideration for each other is an agreement. Agreement is essential for creating a contract. For an agreement an offer & acceptance are essential.

(a) OFFER - The term proposal has been used in Indian Contract Act, 1872. The word offer is used in english law. Acc. to Section 2(a) when one person signifies to another his willingness to do or [not to do] or abstain from doing anything with the view to obtain the assent [consent] of the other person, he is said to make proposal.

~~g names~~

(b) OFFER & INVITATION TO TREAT DISTINGUISHED - Sometimes a person may not offer to sell his product but make some statement or give information with view to invite others to make offers to others on that basis e.g. - in an auction the goods are just for an information to treat. Similarly a book seller sends a catalog of book indicating the prices of various books to many persons. This catalog is not an offer to sell but just an invitation to treat.

→ NOTE: Hence Auction is not an offer rather invitation to treat distinguished / info about product.

(c) TYPES OF OFFER:

General / open

Specific

Express

Implied

Cross (Invalid)

Continuing

→ Directly (offer of product)
→ Not Directly but via ad (ola cab)

1. GENERAL / OPEN - The offer is made to the general public or public at large it is known as a general offer.

[mention facts on your own]

(C) - CARLILL VS CARBOLIC SMOKE BALL COMPANY

It was held that Carlill was entitled to claim the reward as the general offer has to be enforced by some specific person. Therefore, it was held that general offer addressed to all has ripened into the contract & the plaintiff is entitled to claim the reward.

2. SPECIFIC - When the offer is made to a specific or ascertained [specific] person it is known as ^{specific} ~~general~~ offer.

3. EXPRESS - Section 9 provides that an express offer is made by words of mouth or by writing. (directly expressed)

4. IMPLIED - This offer is ^(assumed) inferred from the conduct of the parties e.g. - when a person hires the taxi, he undertakes to pay the fare even though he makes no express promise.

5. CROSS - In this offer actually the offer are made by the both parties. This is not a valid contract as there is no acceptance. e.g. - 'A' says he sells his watch for ₹ 10,000 but 'B' says it is for ₹ 8000.

6. CONTINUING - An offer which is allowed to remain open for acceptance over a period of time.

it is known as continuing / standing offer.

- OFFER MUST BE COMMUNICATED: Section 2 of INDIAN CONTRACT ACT provides that offer must be communicated to the person to whom it is made either by the person himself or through authorized agent.

- ACCEPTANCE - Acc. to Sec 2(b) when a person to whom the proposal is made gives his assent / consent the proposal is said to be accepted. The proposal is ^{when accepted} said to be becomes a promise. The offeree is not bound to accept the offer he is free to reject the same.

- EFFECT OF ACCEPTANCE: Acc. to Sec-10

→ ESSENTIALS OF VALID ACCEPTANCE:

1. Acceptance must be communicated to the person. Communication must be by the offeree or his authorized agent.

(C) POWELL vs LEE:

It was held that

powell's actions failed

because no communication about the decision was made to powell by the board of committee.

[went for interview for job when committee sat for selection powell had a friend in committee & chose him & told him but later another person was chosen & was sent official letter of appointment when powell sued the place.]

2. Acceptance should be absolute & unqualified otherwise sometimes it may result in the counter offer.

- A contract can arise only if it is accepted unconditionally. e.g. - if X amount is said it should be done ds.
- 3. Acceptance should be in a usual & prescribed manner. e.g. - cannot make a deal at 12 P.M night.
- 4. Acceptance should be made while the offer is still subsisting [existence]
e.g. - 'A' decides to sell his watch to 'B' the time was decided by both the parties for the exchange. ~~It was~~ I am off Sunday morning but 'B' fail to reach at time & comes at 8:45 but no completion of ^{offer} contract will take place as contract stands invalid.

For Post

• WHEN IS THE COMMUNICATION OF ACCEPTANCE COMPLETE
Section 4 of INDIAN CONTRACT ACT provides the rules for communication of acceptance by post.

1. The communication of acceptance is completed ~~when~~ as against the proposer when it is put in the course of transmission to him.
2. The communication of acceptance is complete as against the acceptor, when it comes to the knowledge of proposer.

• REVOCAATION OF OFFER:

There is provision in the INDIAN CONTRACT ACT regarding revocation of offer. Sec - 5 provides that revocation of a proposal can be made before it is accepted by the other party and not

afterwards.

- Sec. 6 provides the modes of revocation of offer. These modes are:

1. By the notice of revocation. [By using faster means i.e. telegram, agent]
2. By lapse of time. [e.g. - watch]
3. By failure to fulfill a condition precedent. [e.g. plot for Rs. 50,000 deposit & then lottery for booking]
4. By the death or Insanity of the offerer.

- INTENTION TO CREATE A LEGAL RELATIONSHIP:

(C) MERITT v MERITT

It was held that the husband has full intention to create a legal relationship & therefore he was bound by the contract.

[FACTS: Husband had extramarital affair started living with other & gave up his property to first wife & later claimed the property]

(C) BALFOUR v BALFOUR

It was held that such arrangements are made in the families out of love and affection. It was just a family arrangement there was no legal intention to create a contract. Therefore, husband is not liable.

2. CAPACITY TO CONTRACT:

[Sec. 11] of the Indian Contract Act deals with the essential of valid contract i.e. capacity of parties. Every person who is a major & is of sound mind & is not disqualified by law, is competent to make contract.

Minor
unsound
Disqualified by law

Imp.

a MINOR - Sec 3 of Indian Majority Act 1875 provides that the age of majority is when a person is 18 years. Except in a case of person of whose person or property a guardian is appointed - the age of majority is 21 years.

→ NATURE OF MINOR'S AGREEMENT

No clear provision is there to answer in Indian Contract Act, 1872

MINOR CONCEPT - KHAN GUL VS JAKHA SINGH.

Law of ESTOPPEL HAS BEEN DISCUSSED.
MOHORI BIBEE S DHARMODAS GHOSE

The plaintiff Dharmodas was minor & mortgaged property to defendant, Bhealmo Dutt (money lender). At that time attorney on defendant's behalf knew he was a minor.

Plaintiff (Dharmo) said he was a minor at the time of contract so the contract is void. Defendant claimed that minor misrepresented his age & mortgage if cancelled he shall be repaid 10,500 taken against it.

Court held the fact of age was known to attorney at time of contract so Sec 115 was not applicable as ^{no} misled was done.

Imp ⇒

RATIFICATION OF MINOR'S AGREEMENT:

- A minor's agreement being 'void ab initio', it is incapable of being validated by a ratification...
- Furnished consideration during transaction ^{during minority} ~~for a promise~~ cannot be considered a valid consideration.
- Therefore, when gained the age of majority no ratification can be done. (e.g. - paying back if taken money).

③ SURAJ NARAIN VS SUKHU AHEER

A person borrowed money during minority & then made a fresh promise after attaining majority, to pay sum + interest.

The court with 2:1 majority held the consideration received during minority is not a ^(valid) consideration therefore, he is liable to pay.

★ No minor himself & neither he can appoint/authorize anyone to make contract in his place.

⇒ NO ESTOPPEL AGAINST MINORS

Acc. to Sec 115, any statement made today which misleads other person then one's is not allowed to deny the statement tomorrow ^{when} ~~which~~ question of liability arises e.g- If in a ~~1000~~ company, 'A' tells 'B' to invest ^{by saying} ~~by~~ he has too has invested but ~~if~~ 'B' faces loss & sue 'A' he will be held liable as he asked him to invest.

⑦ MOHORI BIBEE ~~VS~~ DHARMODS GHOSE

⑧ KHAN GUL ~~VS~~ LAKHTA SINGH

COMPLETE JUDGMENT

LAHORE HIGH COURT VIEW

Plaintiff advanced a sum of ₹ 17,500 to minor brought an action to recover money. The court (~~Justice~~ Sir Shadi Lal C.J.) made liberal interpretation.

Acc. To Sec 39 of Specific Relief Act, 1877 a minor can file for cancellation of instrument if he approaches court as plaintiff but since he is defendant in this case he will be liable to pay back.

RESTORATION

July

DOCTRINE OF ~~RESTITUTION~~ (English Law)

- Acc to this if minor has obtained undue benefit in any transaction, he is requ. to store it back the exact things ^{received} consumed/used.
- It is applicable only to goods or property received by a minor but they should be traceable ^{should be} ~~be~~ in his possession.
- If the same has been consumed/ transferred making it untraceable doctrine of restitution doesn't apply.

(C) LESLIE vs SHELL

- Defendant (minor) misrepresented himself for two loans of £200 each from plaintiff
- Action was brought to recover money (£475). Court held money couldn't be recovered as if judgment was in her favour that would make contract come to action but since ~~a~~ contract is void no repayment will be made.

→ LAHORE COURT VIEWS

(a) KHAN GUL VS LAKHA SINGH: Action by plaintiff was brought to recover ₹ 17,500 from a contract with minor. Acc to Sec 39 minor may sue for cancellation of agreement when he goes to court so court gives relief to plaintiff & orders minor to pay back as he was defendant in this case.

(b) LESLIE VS SHEIL - Sir T. Shadi Lal made a significant departure of this case acc to him there can be only restitution of specific property wrongfully obtained by a fraudulent minor, if the same can be traced in his hands & cannot be asked to pay back money as same cannot be identified as it would be enforcing a void agreement.

∴ The relief is allowed not because there is contract b/w the parties, but because there is no contract but one of the party has unjustly

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Imp
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benefited at the cost of another

- Therefore, if the minor goes to court with respect to position following can happen:

→ AS PLAINTIFF - If minor as plaintiff reaches court for cancellation of instrument the court may adjudging the cancellation require such minor to restore benefits & make such compensation to other party as justice may be requ. It's object is to bring parties to original position.

→ AS DEFENDANT - As defendant judge may resist the enforcement of suit on grounds that he is incompetent to contract, the court may ask him to restore such benefits to other party.

⇒ MINOR'S LIABILITY FOR NECESSARIES: ^{repayment}

- FOR NECESSARIES supplied to a minor, ~~A~~ is permitted to person supplying such necessities. It is deemed as a 'QUASI-CONTRACTUAL' obligations [Not direct contracts but liable].

- This section permits reimbursement ^(repayment) ~~(reimbursement)~~
- Necessaries are supplied
- To a person who is incapable of making contract e.g. - minor, lunatic etc.
- To a person who is dependant upon such person incapable of making contract.
- For reimbursement, no personal ~~connection~~ ^{action} can lie against the minor etc but repayment is only permitted from property of such incapable people.

- E.g. - 'A' supplies 'B' (lunatic) with necessaries suitable to his condition in life. 'A' is entitled to be reimbursed from 'B' property.
- E.g. - 'A' supplies the wife & children of 'B' (lunatic) with necessaries suitable to their condition in life. 'A' is entitled to repay.

→ WHAT ARE NECESSARIES:

- Acc Sec. 68 the necessaries supplied to a minor should be suited to his condition in life. Simply things that may be necessary to maintain a person acc to his condition in life.

Date	_____
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- Things necessary for individual are those ~~of~~ without them one cannot possibly reasonably exist. In first place, food, lodging, edu etc are necessities.
- But again proper cultivation of mind, religious info, intellect, moral etc can be necessity.
- Necessity may differ/depend upon state & condition of an infant. E.g- His course may be fine acc to his rank, his edu may vary acc to station he fills, medicine will depend upon his/her illness. So, position of infant in society plays a vital role in deciding his/her necessities.
- Thus, articles of mere luxury are always excluded from ~~ne~~ this act but in some cases may be included e.g- during covid mobile phone & internet became necessary to support one's edu but generally it is ~~a~~ an item of luxury.

(C) GLYDE CYCLE CO 'S HARGREAVES.

It was held that racing cycle was necessary for an infant's apprenticeship.

(C) KUNWARIA 'S SURAJMAL.

It was held that house given to minor on rent for living & continuing edu is deemed to be necessities.

- It is also ~~soo~~ ^{stated} that if minor is already having sufficient supplies of goods & does not need them any further, further supply will not be considered as necessary.

(C) NASH 'S INMAN

A minor had sufficient supply of ~~clothing~~ ^{clothing}, the further supply of ~~tailor~~ ^{by} was made by court held no payment for tailor as he had adequate clothing in accord to his position.

Beneficial Contract of Service & Apprenticeship ^(Job training)

- Under English law infant is bound by the contract of apprenticeship or service

as these contracts are beneficial to him & helps earn a living. Placed equal to contract of necessities.

- E.g- The defendant (infant) who was a trader in hay & straw agreed to supply some clover & hay to plaintiff, took advanced payment for it but failed to make a delivery, action of recovery was brought but court held that even though it was beneficial to him but still he is a minor so no recovery will be made.
- Under Indian Law there is difference in contract of service & apprenticeship. The contract of service is void whereas contract of apprenticeship is valid.

© RAJ RANI VS PREM ADIB

- Raj Rani (minor)'s father entered into a contract on her behalf with a film producer. Acc- to contract Raj Rani was to act as a film actress in defendant's studio on payment of certain amount but she

was not given any work. She sued him
→ Court held 2 things:

- ① Being a minor the contract was void at first place only
- ② ~~father is a third party to contract~~
- ③ ~~No~~ No consideration was made for a contract & therefore consideration moving from a third party, who is minor, is no consideration.

→ CONTRACT OF APPRENTICESHIP

→ Although contract of service in India is void by contract of apprenticeship is valid & binding. Therefore, a minor could enter into a contract of app. & also by minor's guardian on her behalf.

~~eg:-~~

// //

→ CONTRACT OF MARRIAGE -

→ Contract of marriage are supposed to be beneficial to minors & therefore is valid.

© KHIMJI KUMARJI VS LALJI KARAMJI

A minor entered into a marriage because of her mother. With a major boy could be enforced & could she sue for breach of contract. The court held she was allowed.

2/8 POSITION OF MINOR IN PARTNERSHIP:

- Since partnership arises out of contract & it is essential ^{in contract} ~~part~~ ^{parties in contract} of partnership should be competent. Therefore, minor is incompetent to contract.
- Although minor cannot be a partner but he/she can receive benefits. Acc-Sec-30 declares that minor cannot be a partner in a firm but with consent of all partners he may receive benefits of partnership.
- 2/8 If minor is admitted to benefit of partnership, he has right ⁱⁿ ~~to~~ share of property & profits of firm. Such minor is not liable to third party for any act of firm.

(DOCTRINE
OF
RESTITUTION)



On attaining majority, minor has option either to become partner or not & even leave the firm. The action should be taken within period of six months.

→ If minor is not aware that he had been admitted to benefits of partnership, then he may exercise this time to gain knowledge about the same.

- b. SOUNDNESS OF MIND: Section 11 provides that the person signing the contract must be of sound mind.
- Sec 12 provides that the person is to be of sound mind if he is able to understand & is able to give a rational judgment as to its effect upon his interest.
- Soundness Of Mind is Required Only At The Time Of Contract: It is possible that the person who is usually of unsound mind, but occasionally a sound mind, may make a contract when he is of sound mind. It means that even a person who is usually unsound mind can make a contract during the interval when he is of sound mind.
- LUNATIC - is a person who is clinically regarded as insane, silly or sometimes dangerous.
- DRUNKNESS is also included with soundness of mind.

(C) INDERSINGH & PARMESHWAR SINGH

It was held that if the is usually to understand the business & unable to give a rational judgment at the relevant time, no agreement is valid at that time. It is well settled law, the ONUS OF PROOF ^(burden of proof) ~~the~~ of unsoundness of mind of the person always rests upon the person who alleges such state of mind.

(C) JYOTI & Mrs. SONIA

It was held that if the medical examination proved that the person was not ~~not~~ ^{normal}.

at the time of contract then the contract stands invalid.

- The relevant time when the person should be intelligent enough to form a rational judgment as regard to the transaction is the time of making the transaction.

c. DISQUALIFIED BY LAW: As per ICA [Indian Contract Act] the person below the age of 18 years i.e. minor & the person of unsound mind is disqualified from entering into contract in various cases following are ~~of~~ disqualified from entering into contract

- CONVICTS, INSOLVENT PERSON, ALIEN ENEMY, PARDANASHI WOMEN, FOREIGN AMBASSADOR.

- Disqualified persons do not have the right/capacity to enter into a contract. The reason for disqualification can include the political status or the legal status. All these persons are disqualified they cannot enter into a contract [e.g.] In India under Sec 86 provides that previous sanction [permission] of the central government is to be obtained for suing the ambassador or the ruler of the state. Similarly, a convict is incompetent to an agreement till he is in the jail.

- Sometimes, the Pardanashi ladies are also barred under the law. They are not allowed to make a contract and she stands disqualified in regard to capacity to enter into a contract.

- ONLINE CONTRACTS: In the modern electronic media there is a provision for electronic or online contracts. Online contract, Electronic contract is an agreement modeled, signed & executed electronically, usually over internet.
- An online contract is very similar & is drafted in the same manner in which the traditional paper based contract is drafted.
 - The other requirements of the contract are same applicable to online contracts.
 - In case of online contracts the seller who intends to sell their products, present their product's prices & terms for buying such products to the buyers.
 - The buyer who is interested in buying simply clicks on 'agree'. The buyer just has to click on 'I agree' or 'click to agree'.

⇒ COMPARISON BETWEEN ONLINE & TRADITIONAL CONTRACTS: ^(Electronic/Smart)

ONLINE CONTRACT	TRADITIONAL CONTRACT
EASE 1: Online Templates are available one just needs to fill in details & e-sign the contract. e.g. Shopping contract etc.	Traditional contracts demand parties to meet face to face & contract is written by person considering both parties. e.g. Affidavit, Certificate etc.

MISTAKE
MEN

2. No third party is involved in contract between two parties.

3. Third person (advocate) is involved in the process for contract formation.
e.g. Advocate.

ERROR

3. ~~No~~ Technical Issue can cause harm to contract. e.g. - Cyber crimes

3. ~~No~~ ^{Less} chances of any unexpected error to cause hindrance in contract. e.g. - Paper work

EXTRA
COST

4. In this contract no party has to bear any additional transaction cost.
e.g. - Online transaction

4. In this contract one needs to bear extra transactional cost for contract.
e.g. - Labour, Transportation etc.

FLEXIBILITY

5. No physical meeting required, can be signed anywhere & anytime.
e.g. - global contracts

5. Physical meetings required, a place & time of meetings need to be fixed for contract.
e.g. - Court, Work Place etc.

QUALITY

6. No choice to check the quality of product for which contract is being formed.
e.g. - Online shopping.

6. Since meeting of parties are required they have option to check quality before buying goods.
e.g. - Buying of grains & pulses.

LEGALITY

7. INFO TECH ACT, 2000 (IT ACT)

7. CONTRACT ACT, 1872 (Bare Act)

• There are three types of contracts: [ONLINE]
a. BROWSE - WRAP AGREEMENTS: These agreements include website access, policy & terms of services. These agreements are considered to be such cover agreement meant to be binding.

on contradicting party through the use of website.

b. SHRINK WRAP AGREEMENTS: Such contracts are licensing agreements by which contract's terms and conditions are imposed on the parties & are commonly present on plastic & in manuals.

c. CLICK WRAP AGREEMENTS: Such agreements allow the user to consent to the terms & conditions. They just have to click on the button 'Yes' / 'I AGREE'.

⇒ The INFO TECH ACT 2000 [IT ACT] sets out the procedures & guidelines for electronic transactions. In case of other Traditional ~~Ac~~ contracts one needs to refer to CONTRACT ACT 1872.

• M-Commerce Contract (Mobile Commerce)

- Q What is consideration?
 Q What are essentials of valid consideration?
 Q What are exceptions to contract without consideration?

classmate

Date _____

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CONSIDERATION

• Acc To Black Stone, consideration is the recompense given by the party contracting with the other. It is the price of a promise.

• Acc. To Patterson consideration means something which is of some value in eyes of law.

→ Sec 2(d) of ICA defines term consideration.

→ PRIVITY OF CONTRACT: The principle of privity of contract has its origin in English ^{common} law. It means a contract b/w parties only & no third person can sue upon it even if it is made for his benefit.

• Law Revision Committee of 1937 has criticised privity of contract. Recommended its evolution, with passage of time exception have taken place to privity of contract. It doesn't prevent person from enforcing a contract which is for his benefit but without of him being a party to it ~~as is allowed~~.

• Many of the exceptions are connected with the special branches of law of contracts such as negotiable contracts, instrumental agencies, railway slips etc.

(Exception to privity of contract) Some of the most common ^{examples} are:

a) BENEFICIARIES under the ~~trust~~ ^{charge},

~~CHANGE~~ of charge or other arrangements

① Indian Airlines

② KLAUS MITTELBACHER vs EAST INDIAN HOTELS

b) Marriage settlements, partition or other family arrangement.

③ DRAUPATI vs JASSPAT RAI

Dr. Jaspat Rai had violent approach towards wife. Father made agreement with

Page _____
husband if happens again money improperly will be given. The case went to court, claimed that wife is not party to contract, court held it is a family arrangement so this.

- c) Acknowledgment or Estoppel, whereby a party is required to make a payment to third person & he acknowledges it to that third person, binding obligation or duty is incurred upon him. Acknowledgment maybe express or implied. This exception covers the cases when the promisor by his ~~conduct~~ ^{conduct} acknowledges or otherwise constitute himself an agent of third party.

② K Dutta vs M Panda

The court held that B acknowledged his liability towards C by his conduct. Therefore 'C' is entitled to sue B for the recovery of amount due towards him.

- Consideration must be of some value, it should not be in the air. In the eyes of law it should carry some value though. It need not be adequate. [E.g.] 'A' agrees to sell a house worth ₹1,000 for ₹10. The agreement is valid it cannot be held void because of its inadequacy.

③ RANGNA YAKAMMA vs KS PRAKASH

- Consideration must be something more than what the promise is bound to do. The performance of a legal duty is no

consideration for a promise.

② GLASS BROOK ~~VS~~ COUNTY COUNCIL

It was held that if a person is taking extra risk of his life while performing a legal duty, it will not be covered under the general rule of the performance of legal duty.

• ③ RAJU ~~VS~~ BHOOT NATH

It was held that in order to come under an exception to consideration an agreement ~~and~~ must be written & registered.

⇒ 3 exceptions of contract without consideration

① For a Time Barred Debt, a promise should be in written form with sign of promisor or by his agent. Generally or specially authorised in that behalf. The debt must be such of which the creditor might have enforced the payment but for the law of limitation of suits.

⇒ Essentials of a Valid Consideration:

1. CONSIDERATION ONLY AT THE DESIRE OF PROMISOR:

It is essential that consideration must have been given at the desire of promisor, rather than voluntarily or at instance of third party.

② DURGA PRASAD ~~VS~~ BALDEO

Plaintiff constructed shops under instance of Collector of the place. Subsequently, a shop was occupied by

defendant. Since the construction was already done. Defendant made promise to pay plaintiff commission on articles sold through defendant's agency in market as consideration but he failed to do so. Court held consideration did not move at desire of promisor but some other person & it was held the same was not sufficient consideration to support promise. So not liable to pay. ~~££~~

2. CONSIDERATION BY PROMISEE OR ANY OTHER (PRIVITY OF CONTRACT)
In England the consideration must be given by promisee & nobody else whereas in India promisee may not move the consideration yet a third party might do it who is not a party to contract.

(E.g.) 'A' promise to give his watch to 'B' for £2000 but rather than B 'X' pays its price. This is valid contract in India but not in England.

3. CONSIDERATION MAY BE PAST, PRESENT OR FUTURE:

Sec 2(d) recognises 3 types of contract under this:
→ has done or abstained from doing (Past)
→ does or abstains from doing (Executed / Present)
→ promises to do or abstain from doing (Executory / Future)

① Past: It means consideration was paid earlier yet promise is made afterwards but it should be done at the desire of promisor.

In English law past consideration is no consideration.

(E.g.) B's house is on fire: B promises A 'A' £5,000 to ~~save~~ help him.

- Past service voluntarily rendered: [Sect 25(2)]
Indian Law recognise consideration upon promisor's desire ~~no voluntarily~~ consideration. A valid contract is however created upon desire yet ^{it is} exception to agreement without consideration is void. (Agreement without consideration)

E.g. - 'A' finds 'B' purse & gives it to him. B promise to give 'A' ₹50. This is contract.

- Past consideration at promisor's request:
Although if ~~given~~ ^{consideration} given prior to promise but at the request of promisor, it is deemed to be a good consideration.

⑦ CAMPLING vs BRATHWAIT

Defendant was guilty of murder requested plaintiff to make efforts to obtain pardon for him from King. The plaintiff made efforts to do so at his own expense & ^{defendant} promised ₹100 for consideration. It was held that plaintiff had right to enforce the promise & recover money.

- There is no much diff b/w Indian Law & English law as ~~Engl~~ Indian law recognise consideration "at the desire of promisor" where English law doesn't recognise past consideration yet accepts this exception.

(ii) Present: When parties perform his part of the promise which constitutes the consideration by other it's called ~~past~~ ^{present} consideration.
E.g. - 'A' make an offer to reward 'B' of ₹ 7000.

anyone who finds his lost dog & brings him back. 'B' finds it does same. Therefore 'A' is bound to pay

2. Diff b/w Executed consideration & past consideration.

→ Executed consideration is when payment is made simultaneously with making of the contract. E.g- 'A' find 'B' dogs ---

→ Past consideration is when payment is made prior to formation of contract. E.g 'A' has 'B' dogs not ~~promise~~ promise yet 'A' pay £100 to 'B'. This is past consideration.

(iii) Executory / Future: When one person makes a promise in exchange of promise by other side, the performance of obligation by each side to be made subsequent to making of contract.

E.g- 'A' agrees to supply certain goods to B & B agrees to pay ~~for~~ ^{on} future date.

4. SOMETHING i.e An act Abstinence or PROMISE BY THE PROMISSE CONSTITUTES CONSIDERATION

It means that if nothing is done in exchange for promise i.e when there is no act, abstinence or promise, there is no consideration.

Therefore sec 2(d) states ^{at} desire of promisor, promise or any other party has done or abstained from doing or does or abstains from doing etc it is recognised as consideration.

③ Re Mountgarret -

Promisor assured certain school authority to pay for certain expenses done for few addition & improvement in school buildings. When it was being done he approved of those designs but later died. The court held his estate was liable in respect of expense as assurance was given by promisor.

⇒ PROMISE TO PAY LESS / RULE OF PINNELL'S CASE:

.. (Not followed in India)

An agreement to pay smaller sum in lieu of larger sum is not binding as the agreement is without consideration. Implies even if a promise to pay & receive a smaller amount takes place yet promisor can claim whole due amount. It was brought by Pinnel's case:

a sum of £8-10 sh was due to be paid on Nov 11, 1600 by Cole to Pinnel. On Oct 1, 1600 Cole paid £5-2 sh to Pinnel & Pinnel accepted this smaller amount. After that Pinnel brought an action against Cole to enforce payment of full amount. The court held he was entitled to paid full due. But it held that original debt can be discharge only by introduction of new element in contract.

⇒ EXCEPTIONS TO CONTRACT WITHOUT CONSIDERATION

a) Promise Due To Love And Affection:

• There are 3 elements of a contract made out of love & affection

→ Parties to agreement must be standing in near relationship to each other.

→ The promise should be made out of love & affection for other.

→ The promise should be in writing & registered.

*near relationship
love & affection*
E.g. - If one brother not legally bound to do so but transfers his property in favour of another brother it is deemed to be done out of love & affection & is valid.

b) Compensation for Past Voluntary Services:-

Sec 25(2) covers where person without the knowledge of promisor & his promisee ~~later~~ ^{service} does something for latter & promisor undertakes to recompense is called past voluntary service.

This exception also covers situation if one party does something for other where latter was legally compelled to do the same.

E.g. - 'A' finds 'B' purse & gives it to him & 'B' promises to pay ₹50. Valid contract & voluntarily done.

3) Time Barred Debt:-

h

FREE CONSENT (Sec 15-22)

- One of the essentials of contract mentioned in sec 10 is free consent therefore if the consent of one of contracting parties is not free the contract stands void in the eyes of law.

- Consent is said to be free if it is not caused by:

- COERCION (Sec 15)
- UNDUE INFLUENCE (Sec 16)
- FRAUD (Sec 17)
- MISREPRESENTATION (Sec 18)
- MISTAKE (Sec 20, 21, 22)

A. COERCION: [called Duress in English law]
Sec 15 states coercion is said to take place by:

(i) committing, or threatening to commit any forbidden act by IPC (Indian Penal Code)

(ii) or by unlawful detaining, or threatening to detain any property.

(i) forbidden act under IPC:

If a person commits or threatens to commit an act forbidden by IPC with view to obtain consent of other person to agreement then consent is deemed to obtain from coercion.

For coercion, it is not necessary that IPC should be applicable at place where the consent has been so caused (coercion)

E.g- A threatens to shoot B if B does not agree to sell his property to A at stated price, B's consent is caused by coercion.

(C) Ranganayakamma vs Alwar Setti
The question before court was regarding the validity of adoption of boy 13 years of age by a widow on her husband's death. The husband's body was not allowed to be removed from her home for cremation by the relatives of that boy. It was held that adoption of boy was not binding as consent was taken by coercion.

ii) Unlawful detaining of property.

Acc to sec 15 coercion can also be caused by unlawful detaining, threat to detain any property. If detention of property is not unlawful then there is no coercion.

E.g: if an outgoing agent refuses to hand over account books to new agent until his principal executes deed in his favour, it is coercion.

* Exceptions:

a Threat to strike is no coercion

In Workmen of Appin Tea Estates vs Industrial Tribunal, the demand of workers for bonus was accepted under threat of strike. The question arisen was if the demand was accepted under coercion. It was held that because the doctrine of COLLECTIVE BARGAINING under Industrial Dispute Act, backed the strike. Therefore, such a strike was neither a threat to commit offence under IPC nor coercion.

b Statutory compulsion is no coercion

When statute requires a contract to be entered into, the consent ^{is not deemed} ~~is not~~ under undue influence, fraud, misrepresentation or mistake.

© ANDHRA SUGAR LTD vs STATE OF A.P

If any cane grower offered to sell his sugarcane to factory in certain zone, the factory is bound to accept the offer under Andhra Pradesh Sugarcane Act. The court held that agreement entered into was legal compulsion for factory to make agreement but it couldn't be said to enter with lack of consent or coercion.

- "DURESS" under English Law

- Duress consists in actual violence or threat of violence to a person. It includes fear of loss ~~to~~ life or bodily harm including imprisonment.
- but not threat to damage to good
- Threat must be to do something illegal i.e. to commit a tort or crime.
~~Threat~~ Threatening detention would be duress but not threat to prosecute a ^{person} ~~person~~ for an offence.
- Duress must be direct against a party to contract, his wife, child, parent or near relative within his knowledge.

Diff b/w Coercion & Duress

COERCION	DURESS
→ In India it means committing or threatening to commit an act forbidden by IPC	In English law it consists of actual violence or threat of violence to person.
→ It is confined by unlawful acts under IPC	→ It is not confined to any specific acts for acts forbidden by law.
→ It can be directed towards person or property	→ It can be only directed against person & not against property.
→ It may proceed from person ~~not~~ party to contract & can be directed towards stranger as well.	→ Can be proceeded from party to contract & ~~also~~ can be directed towards party to contract wife, parent etc.

UNDUE INFLUENCE: (Sec 16) states that the contract is voidable at the option of party whose consent has been taken by undue influence.

- Undue influence is said if one of the contracting parties is in a position to dominate the will of other & uses it to take unfair advantage over other.
- Dominating position is when:
 - a) stands in fiduciary (Real authority) relation to other or has real authority
 - b) makes contract with person whose mental capacity is temporarily or permanently affected by illness, age etc
 - c) when person in dominating position enters into contract, the transaction can be clearly seen with evidence.
- appears, on face of it then onus of proof that no undue influence was there lies on him.

ESSENTIALS

- a) relation should be such that one party is in position to dominate will of other.
- b) such person uses his position to take unfair advantage.
- c)

• Real or Apparent Authority:

If one party has authority over other it

is expected he would not abuse it to gain undue advantage. E.g. - Income tax authority over assessee, employer over employee etc.

- Fiduciary Relation

Relationship of confidence or trust. When one reposes trust in other, it is expected that he will not be betrayed. If one breaks it one has option to avoid the contract. E.g. - solicitor & client, master & servant etc.

Any relation which one enjoys with "active confidence" is fiduciary relation.

- Person in mental or bodily distress

A person's mental capacity may have been affected by mental or bodily issues, age, illness. There is a possibility that such person's position may be exploited. The law tries to afford protection to person.

E.g. - 'A' diseased by age by 'B' influence over him as his medical attendant agrees to pay B an unreasonable sum for his services. It is undue influence.

- Effects of undue Influence.

→ If the contract is formed in shade of undue influence it stands voidable in eyes of law.

- 'A's son has forged B's name to note by threat to prosecute A's son obtains bond for amount forged on note. It is voidable contract.

C. FRAUD: (Sec 17)

When consent of party to contract has been obtained by fraud it becomes a voidable contract. Fraud or deceit is also a tort for which damages will have to be paid to suffering party.

- Fraud is when intent is to deceive another party or his agent to enter into contract.
- The suggestion, as to fact, of that which is not true by one who does not believe it to be true.
- the active concealment (hide) of a fact by one having knowledge of fact.
- promise made without any intention of performing it.
- any other act fitted to deceive.
- any such act or omission as law specifically declares to be fraudulent.

* It is a duty of person to speak or his silence will be equivalent to speech.

False statement of facts Sec 17(1)

For fraud it is necessary that there should

lie statement of facts which is not true.
Mere opinion is not enough to constitute fraud.

E.g- If 'A' intending to deceive B represents that 500 units are produced at A's factory to induce B to buy A's factory. This contract is voidable at option of B.

- Mere silence is no fraud

→ There should be representation as to (some) certain untrue facts. Active concealment (fact hiding) is equivalent to statement as an untrue impression is being formed in other's mind. But mere silence is not recognised as fraud.

→ Therefore, mere silence as to facts likely to affect willingness of a person to enter into a contract is not fraud, unless the circumstances are such that it is duty of person to speak or his silence is equivalent to speech.

~~EXCEPTIONS~~

→ E.g. In case of 'SALES OF GOODS ACT' rule of 'CAVEAT EMPTOR' implies i.e. buyer beware. So, it is duty of buyer to be careful before purchasing the goods.

→ In auction this law doesn't apply
E.g- A sells in auction to B a horse

which he knew was of unsound mind
& 'A' says nothing to B with this regard. This is not considered as fraud.

EXCEPTIONS:

- General rule ^{status} mere silence is or non-disclosure of facts is not fraud but in exceptional cases it might amount to deception:
- a) When there is duty to speak
- b) When silence is equivalent to speech.
- c) CONTRACTS UBERRIMA FIDES ^{contracts of utmost duty & good faith}

DUTY TO SPEAK:

DUTY →

Circumstances are such that it is duty of person to speak who is keeping silence; keeping silence amounts to fraud in such cases. As by remaining silent false impression is established in other's mind.

UBERRIMA FIDES

Certain contracts are of utmost good faith. So it is expected in such cases that party in whom good faith is supposed will disclose facts by not keeping silence. E.g. - Contract of Insurance.

→ Duty Marital status - Non disclosure
Non-disclosure of ~~Marital status~~ material facts relating to parties to marriage held fraud.

② Rajinder Singh vs Pomilla

It was held that premarital status of party to marriage was material facts which must be disclosed.

→ Statutory Disclosure

Some cases disclosure is required by statute also arises duty to speak.

E.g. - Grantor of licence is bound to disclose ~~the~~^{to} licensee such defects in property licensed which can harm licensee or his property.

In case of fiduciary relationship b/w parties there is duty to disclose all facts which have bearing on contract.

Speaking half-truth amount misrepresentation as well regarding those facts which have not been disclosed.

→ Duty to disclose changes

If the statement is true when made but subsequently becomes false by change of circumstances there duty to disclose before other party acts upon it otherwise it is fraud.

E.g. It is duty of vendor to inform purchaser about price change before purchase is made.

b) SILENCE BEING EQUIVALENT TO SPEECH

Silence to certain facts may be capable of creating an expression to existence of a certain situation.

E.g. - If 'A' says that 'B' A's silence will amount to the soundness of the house here one's silence is equivalent to speech.

• ACTIVE CONCEALMENT [Sec 17(2)]

By an active concealment of certain facts, there is an effort to see that the other party is not able to know the truth & he is made to believe as true which is in fact not so.

E.g.

• Perforimise made without any intention to perform [Sec 17(3)]

Contract formation is done with believe of duty to ~~perf~~ performance but if no such intention when intention is being made, it amounts to fraud.

E.g. - If man takes loan without any intention to repay it is fraud.

• An act or omission that law declares as fraud: [Sec 17(5)]

Fraud also includes any such act or omission as law specifically declares to be fraudulent. Law requires certain duties to be performed, failure to do so is declared fraud.

II WRONGFUL INTENTION:

It is necessary that false statement with intent to induce one to enter into contract intentionally.

③ KAMAL KANT vs PRAKASH DEVI

Kamal Kant files a suit against his mother, Prakash Devi & some others seeking cancellation of deed on ground his signature was obtained by fraud. The deed was attested by plaintiff's father. Court held it was not a fraud as plaintiff was educated man with knowledge regarding law.

D. MISREPRESENTATIONS (Sec 18)

Misrepresentation is a statement made innocently, there is false statement made by person without any intention to deceive. Sometimes when there is breach of duty in which the person takes some advantage at the cost of another person without any intention to deceive, it is known as misrepresentation. If one party acting innocently causes another party to make mistake as to any substance which is subject of an agreement there is said to be misrepresentation.

It is an untrue or false statement of law or fact made by a party, innocently.

Misrepresentation occurs where the party who made the statement reasonably believed that his or her statement was true.

Eg- 'A' sells his horse to B who is of unsound mind but A himself doesn't know about this fact he tells B that the horse is sound, there is misrepresentation. Though this statement is false but he himself believed that same is true.

② DERRY vs PEEK

The directors of company stated that in prospectus of company that they had been authorised to run tramways with steam power but it was yet to be obtained but honestly believed that they will get it but they refused to grant permission. It was held that it was misrepresentation.

Diff. Fraud & Misrepresentation distinguished

Fraud	Misrepr -
→ Person making statement doesn't believe in it himself.	→ Person making statement believes in it himself.
→ Intention is to deceive other party	→ There is no wrongful intention.
→ Remedy under tort is available as fraud is tort as well.	→ No additional remedy is given.

- Effect of flaw in consent (Sec 19)
When consent is obtained by undue influence. The relevant provisions are:

- Voidability of agreement without free consent:

Agreement is contract voidable at the option of party whose consent was so caused. So, the contract can be performed or not will be decided by the suffering party.

- Power to set aside contract induced by undue influence

Any contract under undue influence may be put aside either absolutely or if party who was entitled to avoid it has received (compensation) benefits.

ESSENTIALS

Thus in case of flaw in consent one party or other may have either:

- 1) A right of rescission i.e. doctrine of ^{restitution} ~~rescission~~
- 2) A right to claim compensation.

- 1) Right of rescission.

It is a common remedy available if the consent ~~is~~ is taken with coercion, undue influence, fraud, misrepresentation or mistake. The contract is voidable may be communicated or revoked in same manner with same rule.

The party can only avoid if party has right to do so but if otherwise the contract will be binding on both.

• LIMITATIONS:

a) when contract is affirmed

There are 2 alternatives open to party having a right to avoid contract either avoids it or affirms it. If it is avoided then its nature stands void & unenforceable but if affirmed it will not only be binding but enforcing as well.

Eg- If moneylender lends money & if takes interest for one month then he cannot go back to his promise as per contract.

b) Lapse of Time

A person having a right to avoid the contract must do so within reasonable time period. Failing to exercise the right in time will be taken as affirmation of contract.

E.g- If a person transfers his property to another person while spiritual influence, but for six years he doesn't take any step back on contract it will be regarded as affirming the contract.

c) Acquisition of right by a third party

The right to rescission (avoid) may be gone

Page _____

Before the contract has rescinded some third party gets subject matter of contract i.e. There is possibility that for so long contract has not been avoided & there could be creation of interest in favour of third party.

E.g. A contract of sale of certain goods by A & B, A's consent has been obtained by misrepresentation & so he has the right to avoid it but before A could take action B sells goods to C acting in good faith. Now, A's right has ~~been~~ ^{come to} an end.

d) Inability to restore goods.

When party wants to avoid contract it is important to see if parties can be put to their initial position i.e. doctrine of restitution will be applicable & if not then no right to rescission is there.

E.g. A purchases suit piece from B under voidable contract at A's option. A gets piece already made into suit now A's right to rescission is not applicable & A will not be in position to return suit piece.

• The only chance of getting compensation is changing nature from breach of conditions to breach of warranty.

e) Damages in lieu of rescission of contract

In England the remedy for damages in lieu of rescission of contract provided in

suspect to innocent misrepresentation. When misrepresentation is fraudulent, the aggrieved party may get damages in addition to remedy of avoiding contract as fraud is tort as well.

2) Right to claim compensation

a) Damages in case of fraud

Fraud is tort therefore a party whose consent has been obtained by fraud may seek not just remedy but also damages under law of torts.

b) Damages in case of non-fraudulent misrepresentation

It is vivid in England Misrepresentation Act empowers court in case other than fraudulent misrepresentation to allow damages in lieu of rescission of contract.

c) Duty of party rescinding the contract to pay compensation

Sometimes party entitled to rescind may already received benefits under contract. If he avoid contract liable to restore benefits taken from that contract.

E.g. - Money lender advanced loan of £100 to B by undue influence B execute a bond of £200 with 6% interest. Setting aside bond court orders B to pay £100 back.

Q.

MISTAKE

- When parties' consent is caused by mistake, it is not free consent which is needed for validity of contract.
- ⇒ Mistake works in two ways:

- a) Mistake in mind of parties is such that there is no genuine agreement at all. There may be no meeting of two minds.
- b) There may be genuine agreement but there may be mistake as to matter of fact relating to agreement.
- c) NO CONSENSUS AD IDEM (meeting of minds)
If contracting parties do not agree to same thing in same sense, there seems to be no consent on their part and hence no enforceable contract.

② Raffles v's Wichelhaus

The buyer & seller entered into an agreement under which the seller was to supply a cargo of cotton. There were 2 ships under same name that sailed to Bombay one in Oct & one in Dec. The seller dispatched it in Dec but buyer refused to take it as he thought it was to be received in Oct. The court held the contract as no meeting of minds.

Date _____
Page _____

not contract. It is valid.

ii) Mistake essential to agreement
Whether the mistake of fact is essential to agreement or not depends on a particular contract.

a) Mistake to existence of subject-matter
If both parties believe in existence of subject matter which actually does not exist, it stands void.

E.g. - in contract for sale of specific cargo, if ship carrying the same has been cast away & the goods lost, or sale is of specific horse which has already died agreement is void.

③ Galloway vs Galloway

a man & woman executed a separation deed, both of them working under a common mistaken impression that they were married to each other.

⇒ If parties of contract are mistaken as to subject-matter only regarding quality i.e. when the subject-matter has been identified but not the quality agreement is valid.

b) Mistake as to possibility performance of contract

LEGALITY OF OBJECTS & CONSIDERATION

A complete chapter in
one question?

Date	_____
Page	_____

Sec 23

- One of essential of a contract is the consideration & object should be lawful. Hence, if consideration & /- object of a contract is ~~unlawful~~ ^{unlawful} it stands void in eyes of law.

Q What are unlawful consideration or object?

- Forbidden by Law
- Defeat provisions of law
- Fraudulent
- Causes injury to person or property
- Immoral
- Opposed to public policy
- Agreement to stifle (stop) prosecution
- " " maintenance & champerty
- Trading agreement with enemy
- Marriage brokerage contract
- Agreement tending to injure the public service

I FORBIDDEN BY LAW the agreement offending a statute or public policy is void from the very beginning & the same cannot become valid even if parties agree to it.

E.g. - An agreement to sell liquor without a licence, when a licence is required to sell the same is void. Transfer of business for sale of liquor, to one who doesn't have required licence is void.

(C) UNIVERSAL PLAST LTD VS SANTOSH KUMAR
Textile Commissioner issued an order under Essential Commodities Act forbidding transfer of spindle without Textile Commissioner's permission. The plaintiff, who 4,200 spindle with motors & accessories in Ludhiana agreed to sell it to defendant for consideration of ₹ 1,04,440 receiving an ^{advance} ~~advance~~ of ₹ 10,000 from defendant. Plaintiff took an action to recover the remaining ₹ 92,440. Court held the same was not recoverable as transfer of spindle without permission was illegal.

II. Diff b/w Void & Illegal Contracts

VOID

- Void agreements are wide
- Not prohibited by law
- Co-agreements are valid.
- Parties are not liable to penalty

ILLEGAL

- Illegal agreements are narrow
- Prohibited by Law
- Co-agreements are not valid / invalid
- Parties are liable to penalty

Inter-
connected
Contracts

II. DEFEAT THE PROVISION OF ANY LAW: If the object or consideration of agreement is of nature that if permitted it would defeat the provision of any law. Such ~~cannot be~~ ^{agreements} are void. Agreement being against law cannot be encouraged.

E.g. - Contract made for future Repetration between husband & wife beforehand ~~is~~ stands void as it defeats public policy stated in law.

(C) ABDUL NABAB vs HUSSEINBI

The plaintiff & defendant who married under Mohammedan law, agreed before

marriage ~~to~~ that ^{wife} ~~wif~~ will be allowed to live with ^{her} parents after marriage. After wedding she went to her parents & when husband as her to come back she refused. ~~He~~ Then filed a suit for restitution of conjugal rights. Her defence was that she was permitted by him to live with her parents & also husband has not paid her dower of ₹1,000 as promised. Court held that permission to live separately before marriage ~~that~~ void as being against law.

III FRAUDULENT PURPOSE: If the object or consideration of agreement is to commit fraud, the agreement is void.

E.g. A being agent for a land proprietor () agrees for money, without the knowledge of his principal to obtain for B a lease of land belonging to his principal. The agreement is void as it ~~clearly~~ ^{clearly} implies fraud.

(C) Manni Ram vs PURSHOTTAM LAD:

A knew that railway company would not grant him contract. He entered into contract with B that he should put forward an application for the contract & after it was granted A shall serve as the real contractor. It was held that object of agreement was to commit fraud, it being void.

IV

INTENTION OF CAUSING HARM TO PERSON OR PROPERTY: If the consideration or object of agreement is to cause ~~to~~ injury to ~~someone~~ ^{property or} person it is void. Injury implies harm which is unlawful.

E.g.-

If ~~borrower~~ ^{buyer of property} of money know that seller doesn't have a good title, he persuades the seller to transfer the property with object to cause him trouble the property will stand unmaintainable for buyer.

(C)

J.M.D Alloy Ltd & Bihar State Electricity Board: The board ~~Elect~~ tampered

Electric Meter with raised punitive bill. The appellant, having no option but to accept electric supply on terms conditions imposed by board, even it was unreasonable but being board's monopoly. The raising of bill was held improper by Patna High Court.

IV IMMORAL:

If the consideration - - -
- - - immoral stands void.

Q. What is immoral has not been defined by Indian Contract law. Generally, Immorality depends on norms accepted by society at particular point of time. Also, Immorality has confined its meaning to sexual immorality -

eg. If landlord lends his home to other knowing the same is used to run brothel, rent is not recoverable.

(C) BA, VIJLI VS NANSA NAGAR:

The plaintiff advanced a loan to married women to divorced her husband &

then marry him. The agreement stands void.

NOTE
★

Above case is an example of PAST & FUTURE COHABITATION.

If the object of agreement is future illicit cohabitation b/w man & women it stands unlawful. It is not merely an immoral but illegal agreement as well.

VI

OPPOSED TO PUBLIC POLICY:

If object is void.

Therefore act injurious to the interest of society is against public policy. ~~Public~~

~~This is based on doctrine~~

The doctrine of public policy is based on Maxim "ex turpi causa non oritur actio". which means an agreement which opposes public policy would be void & of no effect.

E.g. - agreement by Govt servant for purchase of land situated within his circle is illegal & opposed to public policy

(C) VIPUL RAI SHARMA'S LUDHIANA IMPROVEMENT TRUST:

Ludhiana Imp. Trust provided that allotment of residential plots, the price should not be less than the cost price of land to Trust. There was enhancement of price by Trust because higher price was paid for acquired land under Land Acquisition Act. It was held that price rise was neither contrary to rule nor against public policy.

⇒ Following have been held opposing to public policy.

X AGREEMENT TO STIFLE (STOP) PROSECUTION:

An agreement to stop prosecution has been regarded against public policy.

The purpose of criminal law is to punish a guilty person & compensation to save a guilty convict from liability would frustrate object. Therefore accepting consideration for same is unlawful.

II AGREEMENT OF MAINTENANCE AND CHAMPERTY

→ Maintenance consist in aiding a party in civil proceeding by providing financial or other assistance without lawful jurisdiction. Hence, implying that when a person intermeddles in the litigation b/w others by providing assistance to one of the parties & he has no interest of his own such inter-meddling is unlawful. Maintenance is both crime & tort.

→ ChamPERTY is a kind of maintenance in which the person assisting in proceedings is to receive a share in the gain made in the proceedings maintained by him. ChamPERTY is therefore, a bargain where one party is to assist the other in recovering property & is to share in the proceeds of action. Therefore "Common Intrest" is a main factor that distinguish Maintenance & ChamPERTY.

III TRADING AGREEMENT WITH ENEMY:

When there is war b/w two countries it is unlawful that one should trade with subject of ~~the~~ ^{enemy} country. If agreements with enemy country are not made ~~to~~ ^{unlawful}, then the commercial transaction b/w two countries may ^{have} effect of promoting economic interest of enemy country.

IV MARRIAGE BROKERAGE CONTRACTS:

Such ~~an~~ ^{where} agreement ~~all~~ marriage is done ~~in shadow~~ in name for some consideration are opposed to public policy & are void as ^{matrimonial} marriage union should be made free & ^{w/m} deliberate decisions of parties itself. Hence, making marriage arranged for financial advantage illegal.

Eg - If father of boy or girl is paid some money in consideration for his son/daughter's wedding, the agreement of such nature are void.

I Agreements tending to injure public service:

An agreement to buy, sell or produce a public office is against public policy. Where the sale of public office etc are unlawful. Such agreements corrupt public life as ~~interfere~~ hinders the selection of properly qualified person for an office.

Eg A promises B to obtain an employment in public service & B promise^{to} pay ~~to~~ a sum of \$1,00. It stands void.

* CONSIDERATION & OBJECT UNLAWFUL IN PART:

- When the consideration or the object is unlawful the agreement is void. Sec 24. says if any part of single consideration for one or more object or any part of several considerations for single object is unlawful the agreement is void.
- When there are two sets of distinct promise & when the void part of the contract can be properly separated

VOID AGREEMENTS (Section 23-30 & 56)

- There are some agreements which have been declared void by Indian Contract Act. Even if they satisfy the conditions of a valid contract they are not enforceable.
- There are 8 types of void agreements:
 1. Agreements of which consideration is not lawful (Sec. 23 & 24)
 2. Agreements without consideration (Sec 25)
 3. " in restraint of marriage (Sec 26)
 4. " in " " Trade (Sec 27)
 5. " " " " legal proceedings (Sec 28)
 6. Agreements which is ambiguous & uncertain (Sec 29)
 - ^{Imp} 7. Agreements by way of wages (Sec 30)
 - ^{Imp} 8. " To do an impossible act. (Sec 56)

I Agreements of object is 1- - - (Sec 23 & 24)
(Legal object & Consideration chapter)

II Agreements without consideration. (Sec 25)
(Legal contracts chapter (19-28))

III AGREEMENTS IN RESTRAINT OF MARRIAGE:
(Sec 26)

Every agreement in restraint of marriage

of any person other than minor is void. Any agreement which restricts a person's freedom to marry, or to marry any person of his choice is against public policy & void.

C) DOWE vs PEERS

The promise by a man in favour of Mrs. Catherine Lowe that he would not marry any other person other than her & further promise to pay Mrs. Lowe a sum of £2000 if he married someone else was held against public policy & void.

E.g. Any agreement with condition in a will that a widow would lose her right to maintenance on re-marriage is void.

IV AGREEMENT IN RESTRAINT OF TRADE (Sec 27)

Every agreement restraining exercise of a lawful profession, trade or business of any kind is void. Generally, ~~rest-~~ ^{curtailing} ~~one~~ ^{carrying} ~~from practicing~~ trade & aims at removing competition & encourages monopolistic tendency. This is against one's individual interest & of society as whole.

Although Sec 27 declares agreements restraining

lawful trade void but no distinction is given for total restraint ~~or~~ or partial trade restraint.

- [E.g.] If agreement states A shall not carry trade anywhere in the country during his lifetime or imposes partial restraint requiring 'A' not to carry trade in specific areas for certain duration stands void.

② Nordenfelt vs Maxim Nordenfelt Guns & Ammunition Co-Ltd.

In this case Nordenfelt was manufacturer of guns & ammo. He sold his business to respondent company for £2,87,500 & agreed for 25 years he would not engage either directly or indirectly:

(a) in trade of business manufacture of gun, gun powder etc.

(b) in any business competing or liable to compete in any way with ⁱⁿ that time.

Court held that first part is valid providing reasonable restriction but as well as partial restriction whereas second part requires him not to compete "in any business" that stands void.

• EXCEPTIONS:

- (a) SALE OF GOODWILL If there is sale of business by person along with its goodwill, the seller

A business may make an agreement with the buyer not to carry on business in competition with buyer.

- If an agreement imposes reasonable restriction on seller's right to carry on business is valid.

• ~~Ex~~ Ex

(b) EXCEPTION UNDER INDIAN ~~PRTER~~ PARTNERSHIP ACT:

Although acc to sec 24 any agreement restraining trade is void but in partnership firms can make it in four conditions:

- Sec 11(2) of Partnership Act permits partners to ~~ss~~ make contract which provides that a partner shall not carry any business other than that of firm while he is partner.
- The outgoing partner is paid his share of goodwill of firm & it is reasonable that he agrees that he will not carry on a business similar to that of firm within a specific period or limit.
- Agreements to be made upon or in anticipation of dissolution of firm is permitted. Those partners who get payment for sale of goodwill of ~~the~~ may agree they will not carry similar business for specific period.

(c) RESTRAINT BY CONTRACT OF SERVICE: An agreement of service under which any employee agrees that he will serve a particular employer for a certain duration, and not anybody else during that period.

into but because of some event the performance becomes impossible. It means that every contract is based on the assumption that the parties to contract will be able to perform it same when due date arrives but if due to some event performance becomes unlawful the same becomes void.

E.g- 'A' & 'B' contracts to marry each other. Before the time is fixed marriage is goes mad. The contract becomes void.

Imp DOCTRINE OF FRUSTURATION / IMPOSSIBILITY:
When the performance of contract becomes impossible & the purpose of parties in mind is frustrated. It can become impossible because of supervening event, then promisor is excused from performance. It is recognised in English law under Sec 56.

→ [E.g.] Contract b/w 'A' & 'B' about a wedding dress was established & delivery by 'B' was to be done on 1st Jan but due to something 'B' couldn't deliver it on 2nd Jan then the doctrine applies as the imp of dress was on 1st Jan not on 2nd so the purpose is frustrated if not delivered on 1st Jan.

is valid

[E.g.] If B contracts with A to serve him faithfully for 12 months as clerk & agrees not to serve anybody else during that period. A is ~~not~~ entitled to injunction restraining B from serving rival business.

GREEN LEAVE CLAUSE:

Green leave clause operates after the session (end) of employment, either upon termination or resignation from service.

- Under this clause, the employee is prohibited from carrying on any business which competes directly or indirectly with the whole or any part of visa processing services or a business similar to business of employer for period of three months after serving notice period & ceasing to be an employee.

(d) TRADE COMBINATIONS:

Sometimes the traders or manufacturers combine together to eliminate competition b/w themselves & make agreements fixing minimum price, regulating the supply of goods & putting profits in a common pool

& dividing the same amongst themselves. These are neither valid ~~or~~ contract nor void.

(c) SOLUS AGREEMENT (Single agreement) - Sometimes the seller or manufacturer of a certain product may agree to supply the whole product to a particular single buyer. Similarly buyer may agree that he will ^{buy from} particular seller or manufacturer only & none else.

• In this agreement's exception when agreements are not valid:

- When buyer does not agree to purchase the whole quantity, he cannot restrain seller from selling his surplus to others.
- When object of ~~restriction~~ ^{contract} is to corner goods or monopolize trade, or restraint is unduly long time. [E.g.] binding party with from generations to generation is void.

(d) AGREEMENTS VOID ONLY TO EXTENT OF RESTRAINT - An agreement in restraint of trade is void only to the extent it imposes restraint. If a part does & other doesn't it stands void with regard to second part.

✓ AGREEMENT IN RESTRAINT OF LEGAL PROCEEDINGS (Sec 28)

An agreement completely restraint ^{enforcement of} one's rights through court of law or which

~~place~~
~~plays~~ a limit as to time within which ~~a right can~~ ~~an agreement~~ be enforced.

Two kinds of agreements are void:

- F Agreement where one party is absolutely debarrred from enforcing right through legal proceedings.
- H Agreement which plays a time limit for enforcing a right through legal proceedings.

I ABSOLUTE RESTRAINT ON LEGAL PROCEEDINGS

If an agreement restricts a party there to absolutely from enforcing his contractual rights by bringing usual legal proceedings the same is void. The agreement is void if restraint is absolute one.

II AGREEMENT LIMITING TIME FOR LEGAL ACTION

Acc. to Indian Limitation Act 1963 there is a time limit for various actions. If an agreement b/w parties prohibits an action if brought after one year of breach of contract, the same is void because it takes away right to bring action.

• EXCEPTIONS:

1. Contract to refer future dispute to arbitration:
 an agreement to be made b/w two or more person by which they are to refer any dispute which may arise b/w them in future

to arbitration & only the amount awarded in such arbitration ~~to only the amount~~ ^{shall be recoverable} in respect of dispute so referred.

An agreement to refer dispute to an arbitration, "does not close the final door to court of law."

2. CONTRACT TO REFER EXISTING QUESTION TO ARBITRATION:
Those questions which have already arisen b/w the parties may be referred by them to arbitration by contract in writing.

VI AMBIGUOUS & UNCERTAIN AGREEMENT

(Sec 29)

Agreements the meanings of which is not certain or capable of being made certain is void. There should be no ambiguity as to what parties intend.

Eg: 1) A agrees to sell to 'B' a 100 tonnes of oil. There is nothing to show, what kind of oil was intended.

2) A agrees to sell B a white horse for ₹ 500 or ₹ 5000 there is nothing to show which of two price is intended.

AGREEMENT BY WAY OF WAGER

(Sec 30)

- It is well settled that a contract cannot be uncertain as well vague. Therefore, there should be no confusion in minds of both

the parties.

2/11/24

AGREEMENT BY WAY OF WAGER (Sec-30)

The contract act doesn't define what a wagering ^{agreement} ~~act~~ is but Carllil v. Carbolic Smoke Ball gives us a insight of what a wagering act is.

It says that a wagering contract is when two persons holds opposing views for a future uncertain event, mutually agree that one ^{will} pay ^{another an} amount to the winner depending upon the determination of the event.

Parties in this contract have no other ~~intention~~ interest than the sum or stake of winning or losing, there being no other real consideration for making of such contract.

* Essentials of Wager Contract:

- Parties should hold opposite views regarding uncertain event.
- Chances of gain or loss to parties is clear on the determination of event's outcome.
- Parties have no other interest than winning or losing the bet.

(a)

OPPOSITE VIEWS

The opposite views could be in respect of past,

present or future event but one thing that should exist is uncertainty in minds of the parties about determination of event in a way or other

(E.g.) If 'A' holding view that it would rain on 1st Jan next B is saying it will not & bets for outcome of this event. On 1st Jan if it rains B will pay ₹100 To A & if not then A will pay B ₹100.

(b) Chances of gain & loss

There should be chances of winning for one party & losing for other with the outcome of uncertain event. The bet cannot be made if there is no chances of winning or losing of winning not losing or losing not winning it cannot be recognised as wagering contract.

(E.g.) If it is predicted that it will rain the whole week an 'A' makes bet with B about ~~happening~~ not happening of ~~rain~~ prediction. This is ~~wagering~~ not a wagering contract as no chances of winning.

(c) No interest except bet

In wagering contracts parties have no other interest in contract than sum or stake & there is no real consideration. The diff. b/w wagering contract & ~~other valid~~ insurance

like that of insurance contract, is "insurable interest". that is one should have subject matter to be secured.

(E.g.) A person can take insurance policy covering risk of fire to his property this agreement is valid but one cannot have insurance policy for Taj Mahal or Qutub Minar.

- In absence of insurable interest, the receiving of money of money depends on happening of an event which does not cause any loss to recipient & therefore void.

* EXCEPTIONS

- Insurance Contracts (Contracts of indemnity)
- Competition involving skills e.g. puzzles
- Horse racing competition
in this value of ₹ 500 or upward to be awarded to the winner of any horse race. It shall not be deemed to be unlawful.

VIII

AGREEMENTS TO DO AN IMPOSSIBLE ACT (Sec 56)

First part of Sec 56 provides ^{that} Agreement to do an impossible in itself is void. Second part provides that a contract to an act becomes unenforceable if

- act becomes ~~void~~ a, impossible
(b) for reason of some event which becomes the promiser could not prevent.
It also provides it becomes unenforceable if act becomes impossible.

• Types of Impossibility:

- a) INITIAL IMPOSSIBILITY - The object of making any contract is that the parties should perform their respective promises. If contract is impossible of being performed, the parties ~~to~~ will never be able to perform it. So, ~~such~~ object contracts are void.

- E.g. - A agrees with B to discover treasure by magic. The performance of agreement being impossible, agreement is void.

- Sec 56 is based on maxim:

"*les non cogit ad impossibilia*" means the law does not compel a man to do what he cannot possibly perform.

- Impossibility here means not only physically but also legal impossibility.

- E.g. - If A contracts to marry B being already married to C such contracts are forbidden by law.

- b) SUBSEQUENT IMPOSSIBILITY: It means that every contract is based on the assumption. The performance of contract may be possible when the contract is entered